

FARRIS, MATHEWS, BRANAN
BOBANGO & HELLEN PLC

ATTORNEYS AT LAW

618 Church Street, Suite 300
Nashville, TN 37219
(615) 726-1200 telephone
(615) 726-1776 facsimile

MEMPHIS DOWNTOWN
One Commerce Square, Suite 2000
Memphis, TN 38103

(901) 259-7100 telephone
(901) 259-7150 facsimile

MEMPHIS EAST
530 Oak Court Drive, Suite 345
Memphis, TN 38117

(901) 762-0530 telephone
(901) 683-2553 facsimile

Of Counsel
Henry H. Hancock
Marye Helen Owen

William W. Farris
Harlan Mathews
Homer Boyd Branam, III
John A. Bobango ^{1,2}
Tim Wade Hellen
Edwin Dean White, III
Charles B. Welch, Jr.
John Michael Farris ²
D. Edward Harvey
Eugene Stone Forrester, Jr.
Dedrick Brittenum, Jr.
Barry F. White
Robert F. Miller
Robert A. McLean ⁵
Anita I. Lotz
Jerry W. Taylor
Michael B. Chance
Mark E. Beutelschies ¹

Steven C. Brammer
Richard H. Booth
Robert D. Hyde ⁴
Michael T. Evangelisti
Kimberly Harris Jordan
Garrett M. Estep ³
Montgomery B. Sernel
Paul C. Peel
Jon F. Minkoff

¹ also licensed in Arkansas

² also licensed in Florida

³ also licensed in Kentucky

⁴ also licensed in Mississippi

⁵ Tennessee R31 Listed Mediator

100 MAY 1 AM 9 06

EXECUTIVE SECRETARY

May 1, 2000

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

VIA HAND DELIVERY

Re: **APPLICATION OF MEMPHIS NETWORKX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATION SERVICES AND JOINT PETITION OF MEMPHIS LIGHT GAS & WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW") AND A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORKX, LLC.**
DOCKET NO. 99-00909

Dear Mr. Waddell:

Please accept for filing an original and thirteen (13) copies of the Motion to Lift Protective Order, filed on behalf of the Time Warner Communications of the Mid-South, Time Warner Telecom of the Mid-South, L.P., and the Tennessee Cable Telecommunications Association.

If you have any questions or concerns with regard to this filing, please do not hesitate to contact me.

Very truly yours,
**FARRIS, MATHEWS, BRANAN
BOBANGO & HELLEN, P.L.C.**


John M. Farris

POSTED
5/1-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF MEMPHIS)
NETWORKX, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT BETWEEN)
MLGW AND A&L REGARDING JOINT)
OWNERSHIP OF MEMPHIS, NETWORKX, LLC.)

100 PM 1 AM 9 06

EXECUTIVE SECRETARY

DOCKET NO. 99-00909

MOTION TO LIFT PROTECTIVE ORDER

Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, and the Tennessee Cable Telecommunications Association (collectively "Intervenors") and file this motion to lift the protective order entered in this cause. In support of its motion, Time Warner submits the following:

I. FACTS

On April 20, 2000, the Tennessee Regulatory Authority ("TRA") entered an order protecting certain confidential information of petitioners, A&L Networks-Tennessee, LLC ("A&L") and Memphis Light, Gas, and Water Division, a division of the City of Memphis ("MLGW"). This protective order defined "confidential information" as "documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development, financial statements or other commercially sensitive information, and which has been specifically designated by the

producing party." (Protective Order, pp. 1-2.)

MLGW and A&L have not submitted any evidence or proof that disclosure of certain financial information would cause them irreparable commercial harm or create a competitive disadvantage. The information sought to be released does not involve business plans or marketing strategies that could be used by competitors.

Indeed, the information Intervenor seeks to disclose is of interest to MLG&W's rate payers, the City of Memphis taxpayers, and may be of importance to the Memphis City Council and the Shelby County Commission which are considering whether the Memphis Networx proposal is in the interest of the community. According to the deposition testimony of John McCullough, the Memphis Networx project could involve and place at risk up to \$130,000,000.00 rate payer dollars and hard assets. As of the date of this hearing, the financial information regarding the investment and risk involved, the financial wherewithal, and plan for raising capital of MLG&W's joint-venture partner and affiliated entities has not been shared in any public meeting to the above public decision making bodies. Time Warner would show to the Authority that the release of the information set forth herein will not injure, damage, or put Memphis Networx and its partners at a competitive disadvantage. Furthermore, Time Warner would show to the Authority that MLG&W owns a 53% financial interest in Memphis Networx, has appointed three of the five members to its governing board (all of whom are MLG&W employees), and intends to invest (and has invested) millions of public rate payer dollars in this venture. As such, the documents Time Warner seeks to release are public documents.

II. LAW AND ARGUMENT

Absent a showing of irreparable harm or competitive disadvantage, a party cannot prevent disclosure of confidential business or proprietary information and is not entitled to a protective order. See Loveall v. Am. Honda Motor Co., 694 S.W.2d 937, 939 (Tenn. 1985). In Loveall, the Tennessee Supreme Court discussed the showing necessary to justify a protective order:

[T]he moving party must demonstrate specific examples of harm and not mere conclusory [sic] allegations. [citations omitted]. When confidential commercial information is involved, this standard requires a showing that disclosure will result in clearly defined and very serious injury to the company's business [citations omitted], or, stated differently, great competitive disadvantage and irreparable harm.

Id. Furthermore, the subject information's association with MLG&W makes it a matter of public record, and, accordingly, it is subject to the provisions of the Public Records Act, see, Tenn. Code Ann. §§ 10-7-101 et. seq.

MLGW and A&L have made no showing that disclosure of (certain financial information) would cause them great competitive disadvantage and irreparable harm. (Additional facts). Under Tennessee law, absent such a showing, they are not entitled to a protective order.

Indeed, the financial information MLGW and A&L seek to protect is not considered proprietary or confidential under Tennessee law. Proprietary information involves information or practices developed by businesses to gain an advantage over their competitors. Cf., Vantage Technology, LLC, v. Cross, C/A No. 03A01-9810-CH-00333, 1999 Tenn. App. LEXIS 707 (Tenn. Ct. App. Oct. 19, 1999) (company's specialized training, customer diaries, and

special customer relationships were proprietary information); Cam Int'l L.P. v. Turner, No. 01-A-01-9203-CH-00116, 1992 Tenn. App. LEXIS 341 (Tenn. Ct. App. April 15, 1992) (customer lists, pricing policies, and operational methods developed over years of doing business were proprietary information and properly contained within a non-competition agreement because such information, if disclosed, would constitute unfair competition).

The financial information does not involve customer lists, pricing policies, or marketing strategies. It simply involves the financial status of both parties and how they will fund the operation of Memphis Networkx. Disclosure of such information will not create a competitive disadvantage for Memphis Networkx or A&L and its related entities, and, therefore, this information is not proprietary and not subject to a protective order.

Memphis Networkx is a hybrid of public and private interests, and public rate payer money will be used, in part, to fund this operation. The financial information of A&L and Memphis Networkx is essential to determine the viability of Memphis Networkx. Limiting disclosure of this information will deprive other governmental bodies, and the public at large, from making informed decisions about this enterprise and whether the public's money is wisely invested. In light of the fact that Memphis Networkx and A&L have not offered proof that disclosure of this information would cause them irreparable harm or competitive disadvantage, as required under Tennessee Law, the fact that this information is not considered propriety or confidential, and because of the quasi-public nature of the enterprise involved, the protective order should not shield the financial status and standing of Memphis Networkx and A&L.

WHEREFORE, PREMISES CONSIDERED, Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, and Tennessee Cable

Telecommunications Association respectfully request that the protective order be modified to delete coverage of the financial information set forth herein regarding Memphis Network and A&L.

Respectfully submitted,

**FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.**

By. 

John M. Farris (10435)

Attorney for Time Warner Communications
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
(901) 259-7100

Documents Requested for Release

AL-1

AL-3

AL-4

Alex Lowe Financial Statement 12/31/99

MN-24

MN-25

MN-26

MN-27

MN-28

MN-29

MN-31

Financial Statement for Memphis Networx 12/31/99